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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,360	12/06/2005	Anke Gerda Sinnema	2003P01789WOUS	5647

24737 7590 04/26/2017  
PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
465 Columbus Avenue  
Suite 340  
Valhalla, NY 10595

EXAMINER
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DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

NOTIFICATION DATE	DELIVERY MODE
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04/26/2017

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patti.demichele@Philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ANKE GERDA SINNEMA,  
ALBERTUS JOHANNES CORNELIS VAN DER BORST,  
MARTIN LEONARD BAKKER, and GEERT-JAN DARWINKEL

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Appeal 2016-000078  
Application 10/559,360  
Technology Center 3700

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Before JOHN C. KERINS, STEFAN STAICOVICI, and  
LEE L. STEPINA, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Anke Gerda Sinnema et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1 and 3. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE INVENTION

Appellants' invention relates to a shaving apparatus having a skin contact surface.

Claim 1, the sole independent claim, is representative of the claimed invention and reads as follows:

1. A shaving apparatus comprising:

a device for providing a shaving aid additive;

at least one rotary cutting unit including an external annular cutting member having a wall perpendicular to and separating parallel skin contact region and hair trapping apertures region; and

an annular additive retainer positioned on the skin contact region below the hair trapping apertures region and including a domed shape, a plurality of circular, sloping ridges having different concentric diameters centered on the axis, a dimple at the axis, and a plurality of grooves formed between adjacent ones of the plurality of ridges, a base of the dimple and of each groove is higher on the dome than the bases of the grooves with larger diameters,

wherein the wall and the ridges are configured to temporarily store and prevent the shaving aid additive from entering the hair trapping apertures region.

## REJECTIONS

The Examiner rejects:

(i) claims 1 and 3 under 35 U.S.C. § 112, second paragraph, as being indefinite; and

(ii) claims 1 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Geertsma (US 2002/0083591 A1, published July 4, 2002), Westerhof (WO 98/08660 A1, published Mar. 5, 1998), and Hasselquist (US 1,416,199, issued May 16, 1922).

## ANALYSIS

### *Claims 1 and 3--Indefiniteness<sup>1</sup>*

The Examiner finds that the term “parallel” is indefinite because “it is not clear as to what aspects of the skin contact region and the hair trapping apertures region are parallel (i.e., parallel in what manner?).” Final Act. 2. The Examiner also finds that, because the Specification discloses that the shaving aid retaining means is “in” the skin contact region 16, it is not clear how the annular additive retainer is provided or positioned “on” the skin contact region, as required by claim 1. *See* Ans. 10.

Appellants reply that Figure 4 and page 4, lines 10 to 18, of the Specification disclose that “(1) the skin contact region and (2) hair trapping apertures region are parallel to each other as recited in the claims.” Reply Br. 7.<sup>2</sup> Appellants assert that Figure 4 and page 4, lines 3 to 9, of the Specification support the limitation “positioned on the skin contact region.” *Id.* at 4. Appellants thus assert that “claim 1 is not vague and is not indefinite.” *Id.* at 7.

We agree with Appellants that Figure 4 and page 4, lines 10 to 18, of the Specification make it clear to a person of ordinary skill in the art that the

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<sup>1</sup> The Examiner also rejected claim 1 under the same statutory basis finding that the terms “wall” and “the axis” are unclear, but withdrew this rejection. *See* Ans. 9–10.

<sup>2</sup> Although Appellants’ discussion of the term “parallel” is under the heading “Rejection of the Claims Under 35 U.S.C. § 103(a),” Appellants’ discussion appears to refute the Examiner’s position that the term “parallel” is indefinite. *See* Reply Br. 6–8. In addition, Appellants appear to accept that the regions of Geertsma are “parallel in the same manner or to the same extent as the corresponding structure of the present application.” Reply Br. 8.

phrase “parallel skin contact region and hair trapping apertures region” means that skin contact region (16) and hair trapping apertures region (5), which we take to be surfaces of the external annular cutting member are themselves parallel to each other.

Insofar as the phrase “positioned on the skin contact region” is concerned, other terminology might be more clear, in that, when the annular additive retainer is positioned on the skin contact region, which we, too, regard as a surface of the external annular cutting member, the skin contact region, at least in the area covered by the annular additive retainer, will not come into contact with the skin. Nonetheless, use of the term “on” does not make the claim indefinite because one of ordinary skill, taking into consideration the embodiment illustrated in Appellants’ Figure 4, would understand that the annular additive retainer (cap 33) is positioned *on* skin contact region or surface (16).

Because a person of ordinary skill in the art would be able to determine the metes and bounds of the limitations at issue, as well as the claims as a whole, the rejection of claims 1 and 3 under 35 U.S.C. § 112, second paragraph, is not sustained.

#### *Claims 1 and 3--Obviousness*

The Examiner finds that Geertsma discloses “almost every structural limitation of the claimed invention,” except for “(a) a device for providing the shaving aid additive; and (b) the specific annular additive retainer configuration.” Final Act. 3–4. The Examiner relies on Westerhof as disclosing a device for providing a shaving aid additive, and Appellants do not contest that the Examiner’s conclusion that it would have been obvious

to combine Geertsma and Westerhof is improper. *See* Appeal Br. 13. The Examiner relies on Hasselquist as teaching the recited configuration of the retainer and concludes that it would have been obvious to one having ordinary skill in the art to “provide an alternative friction-reducing configuration in the form of a concentric ridge structure such as that taught by Hasselquist,” to eliminate undesirable suction or adhering action. Final Act. 6.

Appellants argue that “because in Hasselquist and Geertsma the hair trappings are positioned in opposite locations relative [to] their respective skin contact regions, it would NOT be obvious to combine these two references.” Appeal Br. 9. Appellants assert that because Geertsma does not teach, disclose or suggest an annular additive retainer, and in Hasselquist the corrugated face plate 22 is held above the hair trappings, Geertsma and Hasselquist fail to teach an annular additive retainer positioned on the skin contact region below the hair trapping apertures region, as recited in claim 1. *Id.* Appellants assert that, moreover, “th[e] incompatible structure of Hasselquist teaches away from positioning an annular additive retainer BELOW the hair trapping apertures as recited in the claims.” *Id.* at 10.

The Examiner responds that “Appellants’ arguments are not commensurate with the subject prior art rejection,” because “the shaving apparatus of Geertsma '591 is modified by replacing its friction-reducing plate 9 with the friction-reducing plate 22 of Hasselquist,” and the rejection does not rely on the position of the hair receiving apertures region of Hasselquist. Ans. 14.

Appellants reply that “the structural incompatibility exists due to the nature of the shaver (i.e., electric vs. mechanical) precisely because of their

perceived functional similarity or intended use.” Reply Br. 11. Appellants argue that “at least due to the dissimilarity in use and the different function provided by the face plate 22 of Hasselquist and skin support surface (9) of Geertsma, it is respectfully submitted that it would not be obvious to one of ordinary skill in the art to combine these references.” *Id.* at 12. Appellants assert that, moreover, the combination of Geertsma and Hasselquist is improper because the slope of Hasselquist’s face plate 22 “is too big to remain below the cutter even if combined with Geertsma . . . the size of face plate 22 of Hasselquist is at least three times as large as the skin support surface (9) of Geertsma . . . the face plate 22 covers the whole of the shaver and in Geertsma three skin support surfaces (9) are used.” Reply Br. 13.

With respect to Appellants’ initial argument and the position of the hair trapping apertures, we note that the position of the hair trapping apertures region of Hasselquist is irrelevant to the Examiner’s rejection because the Examiner relies on Hasselquist only for the particular shape of the additive retainer, i.e., friction reducing plate 22 of Hasselquist. *See* Ans. 14. To this end, Geertsma itself discloses an additive retainer, namely, cover 9 below a hair trapping region 5 (*see* Geertsma, Fig. 3; *see also* Final Act. 4), and the Examiner’s proposed combination modifies cover 9, or replaces it with a similarly-sized cover, such that it has a concentric ridge structure like that of face-plate 22 in Hasselquist. *See* Final Act. 6. Appellants’ assertion that Hasselquist teaches away from positioning an annular additive retainer below the hair trapping apertures, as recited, is not germane to the rejection, in that it appears to ignore the fact that Geertsma teaches this limitation and is relied on by the Examiner in making the rejection.

In addition, we do not find Appellants' additional arguments in the Reply Brief to be persuasive, in that, as noted above, the Examiner is not proposing to bodily incorporate the identical face-plate of Hasselquist in the Geertsma device. Rather, the Examiner is relying on the teachings of Hasselquist as disclosing a domed shape retainer with a concentric ridge structure. Final Act. 6. In the Geertsma device, the retainer would remain below the hair trapping region and be in each of cutting units 3 of Geertsma, in the same manner as do skin supporting surfaces 9 of Geertsma. *See* Geertsma, para. 12 (each cutter of cutting unit 3 has the disclosed structure). The device of Geertsma would operate in the manner intended, but with a different shaped decorative cover 9. Further, Appellants' argument that the convex face plate 22 of Hasselquist teaches away from the concave skin support surface 9 of Geertsma (*see* Reply Br. 8–9) misapplies the concept of “teaching away,” because it merely points out a difference in structure and fails to show where either reference criticizes, discredits or otherwise discourages the use of either a convex or concave shape in as these covers. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004); *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

Appellants also argue that reliance on Hasselquist is misplaced because Geertsma does not suggest replacing cover 9 with an annular additive retainer as claimed. *See* Appeal Br. 10–11. Appellants assert that “Geertsma certainly does not provide any motivation for replacement of its cover 9.” *Id.* at 11.

The Examiner responds that there is no requirement for reference to suggest a modification of itself. Ans. 16.

Appellants reply that because the combined teachings of Geertsma



and Hasselquist do not “suggest the subject matter of retention of the shaving aid additive, it would not be obvious to one of ordinary skill in the art to combine these references as combined by the Examiner’s Answer.” Reply Br. 10.

Appellants’ arguments are not commensurate with the Examiner’s rejection. The Examiner finds that Hasselquist provides a reason to modify Geertsma, namely, to eliminate undesirable suction or adhering action. *See, e.g.,* Ans. 17. The Examiner states that Geertsma as modified by Hasselquist results in the structure of the annular additive retainer recited in claim 1 and that this structure “is fully capable of performing such a function” (of temporarily storing and preventing the shaving aid additive from entering the hair-trapping apertures in the external cutting member). Final Act. 5. Appellants do not explain why the modified Geertsma device would not meet the recited features, or would not be capable of performing any recited functions. As such, we are not apprised of Examiner error on this point.

Appellants also argue that the Examiner’s reason to combine the teachings of the references is insufficient because the length of time between when Hasselquist was issued and Geertsma was published “is certainly strong evidence that the combination of recited elements is not obvious.” Appeal Br. 12.

The Examiner responds that substituting art-recognized equivalents used for the same purpose provides sufficient rationale to support an obviousness rejection. *See* Ans. 17 (citing *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) (“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a

predictable result.”). The Examiner also notes that “contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references.” *Id.* at 18 (citing *In re Wright*, 569 F.2d 1124 (CCPA 1977)).

Appellants reply that because there are no shavers in the marketplace that include all limitations set forth in the claims, and because the Examiner did not find such shavers in the patent databases, “this great difference in the ages of the patents cited ... is strong evidence that such a result is not obvious.” Reply Br. 13.

Appellants’ argument is not persuasive. Although we appreciate that Hasselquist is nearly 80 years older than Geertsma, Appellants offer no evidence that the art tried and failed to solve any problems Appellants’ claimed device purports to solve, as is required by *Wright*. Nor do Appellants provide objective evidence of long-felt need. *See Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317, 1325 (Fed. Cir. 2004) (“Absent a showing of long-felt need or the failure of others, the mere passage of time without the claimed invention is not evidence of nonobviousness.”); *see also Nike, Inc. v. Adidas AG*, 812 F.3d 1326, 1337–1338 (Fed. Cir. 2016).

Appellants make additional arguments as to the “incompatibility of the structures of Hasselquist and Geertsma apparatuses,” and assert that it would not have been obvious to combine the corrugated face plate 22 sitting above hair trappings with Geertsma since this positioning as suggested makes the device inoperable and prevents shaving. Appeal Br. 12. Appellants also assert that whereas “Hasselquist describes a mechanical

razor, Geertsma describes an electrical shaver,” which “are incompatible by their operation,” and thus would not have been obvious to combine together as suggested. *Id.*

The Examiner responds that there are no compatibility issues because “one having ordinary skill in the art would readily understand how to adopt such a teaching; for example, by providing a replacement plate 22 that is generally the same size as the plate 9 of Geertsma '591 that is being replaced.” Ans. 19. The Examiner states that the devices of both Geertsma and Hasselquist “have skin-contacting surfaces/portions,” and that, in the shaving arts, one would look to any of the various types of mechanical, electrical, or manually-operated shaving devices “for improvements and/or desired shaving characteristics, particularly where there is common ground between the types, such as problems of traversing the skin, and would be motivated to make modifications based on the available technology.” *Id.* at 20.

Appellants reply that “[t]he fields of art are incompatible,” and, moreover, neither Geertsma nor Hasselquist “is directed to a device for providing a shaving aid additive.” Reply Br. 10.

To the extent that Appellants’ position is that either Geertsma or Hasselquist is nonanalogous art, we note that the Geertsma device and the Hasselquist device appear to be in the same field of endeavor as Appellants’ claimed device, namely, a shaving apparatus having a skin contact surface, and thus are within the ambit of analogous art. Therefore, we are not persuaded that any disparity in the nature of the teachings of Geertsma and Hasselquist renders them non-combinable. Further, Appellants offer no evidence that Geertsma and Hasselquist could not be used with a shaving aid

additive. Nor, as mentioned at the outset, have Appellants argued that the articulated reason to combine the teachings of Westerhof, which is relied on by the Examiner as teaching a device providing a shaving aid additive, with Geertsma (as modified by Hasselquist), is somehow deficient. *See* Final Act. 5; Appeal Br., *passim*; Reply Br., *passim*.

We have carefully considered all of Appellants' arguments, but they also do not apprise us of error in the Examiner's rejection. Thus, for the reasons discussed above, we sustain the rejection under 35 U.S.C.

§ 103(a) of claim 1, and of claim 3 depending therefrom, as unpatentable over Geertsma, Westerhof, and Hasselquist.

#### DECISION

The Examiner's decision to reject claims 1 and 3 under 35 U.S.C. § 112, second paragraph, is reversed.

The Examiner's decision to reject claims 1 and 3 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED